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November 13, 2009

The Honorable Sterling Johnson, Jr.
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Thomas Archer et al.
Criminal Docket No. 08-288 (SJ)

Dear Judge Johnson:

The Defense hereby renews its objection to the testimony of Mel Shatzkamer. Although the Court denied the defendants' objection to the testimony of Mel Shatzkamer in its decision dated July 20, 2009, the Court ruled that it was permitted to renew its application prior to trial.

**I THE TESTIMONY OF MEL SHATZKAMER SHOULD BE
PRECLUDED AS UNDULY PREJUDICIAL**

It is the Government's allegation that the Defendants submitted fraudulent applications so that individuals who did not qualify for the legalization program known as CSS/LULAC could obtain immigration benefits. Allegations both defendants deny. The program allowed individuals who were present without status in the United States prior to January 1, 1982, to eventually obtain legal status, was a result of a settlement of two class action lawsuits. One was brought by the League of United Latin American Citizens (LULAC) which was thereafter was substituted by Felicity Mary Newman (NEWMAN) and one brought by Catholic Social Services (CSS) against the government. Both cases were resolved by settlement after seventeen (17) years of litigation. The stipulations are annexed hereto as Exhibits A & B herein.

The settlement terms in addition to other provisions provide for the following:

- a. The extension of the program filing period if the number of applicants exceed two hundred forty thousand;
- b. The applications not to be denied if the applicants' sole proof of continuous residence was in the form of affidavits;

The Government has advised that in the instant case their witness officer Shatzkamer will provide testimony similar to the testimony he provided in the case of the United States v. Gupta. The Government has further notified the defense that their witness will further testify as to *patterns* officer Shatzkamer believes indicate fraud. Namely, officer Shatzkamer will testify that the “fraud indicators” included the fact that the Department of Homeland Security received over seventy-nine thousand applicants nationwide when it only expected twenty thousand. In the case of the Gupta officer Shatzkamer testified that fraud was thought to be associated with Mr. Gupta’s applications because his agency had estimated when the CSS (LULAC) Newman legalization program went into effect that only twenty thousand applications would be received and instead the agency received seventy-nine thousand (79,000) applications¹. According to officer Shatzkamer, the fact that his agency only expected twenty thousand applications, it found Mr. Gupta submission of five hundred applications to be too large a number and thus an indication of fraud. Thus, in the instant case as was done in the Gupta, officer Shatzkamer is going to insinuate that Mr. Archer’s submission of 176 applications in and of itself is indicative of fraud. By allowing officer Shatzkamer to state that the Department of Homeland Security was expecting only twenty thousand applications is to permit the government to misrepresent to the jury the terms of the stipulation of settlement, which was clear that the number of applicants could well exceed two hundred forty thousand.

Officer Shatzkamer is further expected to testify that another “fraud indicator” consists of the fact that many of the applications submitted by Mr. Archer did not have documentation for continuous residence and first entry into the United States other than in the forms of affidavits. However, such statement is also a misrepresentation of the settlement terms in both NEWMAN and CSS. In fact, both settlements provided that the government was to take into account the passage of time and not deny applicants because their only source of proof of continuous residence consisted of affidavits.

Finally, by the Government further not qualifying officer Shatzkamer’s as an expert in patterns, his testimony as to patterns is not a matter of fact as the Government alleges, but a matter of personal opinion. The prejudicial value of the opinion outweighs the probative value and the testimony is only being submitted to inflame the jury. The testimony is especially prejudicial as there will be no testimony as to what if any empirical data or methodology was employed for officer Shatzkamer to deem the files had “fraud indicators.” In the instant case the Government has permitted the defense to review the immigration files on whose behalf Mr. Archer submitted I-687 forms. The files however indicate that the real reason the files were flagged was because the applicants had filed prior applications for immigration benefits, and those applications had previously been deemed fraudulent and/or contradicted what the applicants stated in the I-687 form Mr. Archer submitted. Mr. Archer, however was unaware of the contents of the prior applications as the applications were filed by other attorneys, years before

¹ See page 64 of the trial transcript of the United States v. Gupta Criminal Docket No. 07-177 (DAB) (S.D.N.Y.)

Mr. Archer ever met the applicants or became an attorney. In fact, the only pattern that the files indicate is that the applicants would go from lawyer to lawyer to obtain information and once they obtained all the information they deemed necessary they would tailor their information and give the tailored information to an unwitting attorney.

As the government has acknowledged that officer Shatzkamer has no first-hand knowledge of the files, it appears as if the sole purpose of officer Shatzkamer's testimony is to inflame the jury. Especially, if officer Shatzkamer were permitted to state as he was permitted to do in Gupta within the first ten minutes of his testimony that he worked for the fraud detection unit for twenty-one years on four different occasions.² It is argued that the repeated mention of officer. Shatzkamer's title and years of service implants in the jurors' minds that if officer Shatzkamer reviewed the Defendant's files it is because fraud must have occurred. The prejudice becomes even more apparent if when questioned as to how he assembled the boxes officer Shatzkamer testifies in same manner that he did in the Gupta trial, namely, that the criteria used to assemble the boxes were nothing other than that the files were prepared by the Defendant³.

Since the government has stated that officer Shatzkamer is not being qualified as an expert, when the government responded to the defense' requests for copies of any reports of any examinations or tests conducted in connection with this case; it is the defenses' position that officer Shatzkamer's testimony fails to comport with the requirements set forth in Daubert v. Merrell Dow Pharms, 509 U.S. 579, 125 L. Ed. 2d 469, 113 S. Ct. 2786 (1993). In Daubert the Court held expert testimony as to patterns may not be deemed admissible if is without any objective and reliable method, as to do so is nothing but prejudicial to the defendant. The criteria set forth in Daubert for the admission of expert scientific testimony regarding patterns was thereafter extended to all expert testimony in the case of Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147, 143 L. Ed. 2d 238, 119 S. Ct. 1167 (1999) and thereafter the Federal Rules of Evidence were amended in 2002 in response to now provide:

That if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. Fed. R. Evid. 702.

² See page 53 of the trial transcript of the Unites States v. Gupta Criminal Docket No. 07-177 (DAB) (S.D.N.Y.)

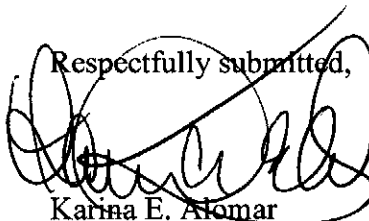
³ See page 67 of the trial transcript of the Unites States v. Gupta Criminal Docket No. 07-177 (DAB) (S.D.N.Y.)

Although the Government is stating that officer Shatzkamer will not be qualified as an expert they are having officer Shatzkamer provide expert testimony. Thus the government is failing to show that officer Shatzkamer is an expert to discuss patterns of fraud. Instead the Government is attempting to have officer Shatzkamer testify as to patterns of fraud without requiring that the methodology in identifying the so called "patterns" be the product of reliable principles and methods. For the government to have a witness state that he or she has worked in the Fraud Detection Unit of the Department of Homeland Security and that he observed patterns of fraud in the applications submitted by the defendant with nothing more is extremely prejudicial and a violation of Federal Rule of Evidence 702.

CONCLUSION

For all of the reasons set forth above, the Defendants object to the admission into evidence of the applications Mr. Archer's office submitted on behalf of his clients pursuant to Rules 401, 402, 403, & 702 of the Federal Rules of Evidence and of officer Shatzkamer's testimony.

Respectfully submitted,



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EXHIBIT A

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Attorneys for plaintiffs (additional counsel listed on continuation page)

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

FELICITY MARY NEWMAN,
et al.,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND
 IMMIGRATION SERVICES,¹ *et al.*,

Defendants.

CIV. NO. 87-4757-WDK(CWx)

ORDER APPROVING SETTLEMENT
 OF CLASS ACTION

~~[proposed]~~

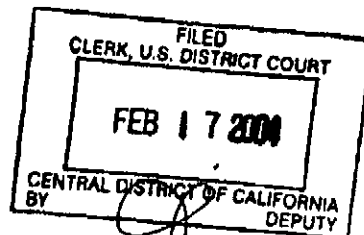
Hearing: None
 Time: None

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THIS CONSTITUTES NOTICE OF ENTRY
 AS REQUIRED BY FRCP, RULE 77(d).

¹ Pursuant to Rule 25 of the Federal Rules of Civil Procedure United States Citizenship and Immigration Services ("CIS") is substituted for the former Immigration and Naturalization Service, and Eduardo Aguirre, Jr., Acting Director, in his official capacity, is substituted for former Commissioner Doris Meissner.

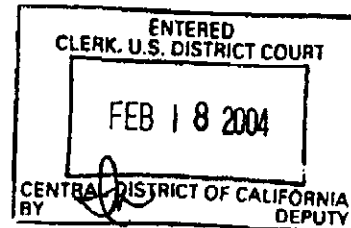
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Priority
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ORIGINAL



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SCANNED

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3 Civil Division

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Additional attorneys for plaintiffs

///

SCANNED

1 This matter is before the Court pursuant to the parties' Joint Motion to Approve
2 Settlement Agreement. The Court has read and considered the parties' motion, the
3 comments and objection of putative class members to the proposed settlement, and the
4 parties' joint response to those objections. The Court finds that the proposed settlement
5 fully and fairly resolves the claims of class members herein and that it should accordingly
6 be approved.

7 Rule 23(e) of the Federal Rules of Civil Procedure requires the Court to approve a
8 settlement in a class action. Rule 23(e) provides:

9 A class action shall not be dismissed or compromised without the approval of the
10 court, and notice of the proposed dismissal or compromise shall be given to all
11 members of the class in such manner as the court directs.

12 Under Rule 23(e), a class settlement will be approved so long as the "proposed
13 settlement . . . is fundamentally fair, adequate, and reasonable." *Class Plaintiffs v. City of*
14 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). It is the settlement taken as a whole, rather
15 than the individual component parts, that must be examined for overall fairness. *Officers*
16 *for Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). There is a
17 "strong judicial policy that favors settlements, particularly where complex class action
18 litigation is concerned." *Class Plaintiffs v. City of Seattle, supra*, at 1276.

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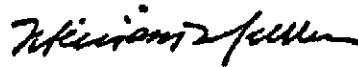
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1 For the reasons set out in the parties' joint motion to approve the settlement and
 2 their joint response to the objections and comments of putative class members, the Court
 3 finds that the settlement is fundamentally fair, adequate and reasonable. Accordingly,

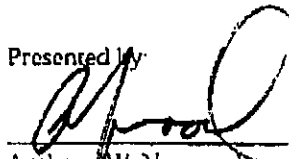
4 IT IS HEREBY ORDERED that the proposed settlement is approved

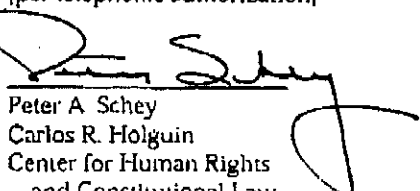
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 6 Dated: FEB 17 2004
~~January 16~~, 2004.



United States District Judge

8
 9 Presented by:

10 
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 12 U.S. Department of Justice
 13 Office of Immigration Litigation
 14 Civil Division
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12 Attorneys for Plaintiffs (Additional Counsel listed on Continuation
 Page)

13 IN THE UNITED STATES DISTRICT COURT
 14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 FELICITY MARY NEWMAN,
 et al.,)

CIV. NO. 87-4757-WDK(CWx)

16)
 17)
 18 Plaintiffs,)

JOINT STIPULATION
 OF SETTLEMENT

19 v.)

20 BUREAU OF CITIZENSHIP AND
 IMMIGRATION SERVICES,¹/et al.,)

Hearing:
 Time:

21 Defendants.)
 22)

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 27 ¹/ Pursuant to Rule 25 of the Federal Rules of Civil Procedure the
 Bureau of Citizenship and Immigration Services ("BCIS") is substituted
 28 for the former Immigration and Naturalization Service, and Eduardo
 Aguirre, Jr., Acting Director, in his official capacity, is substituted
 for former Commissioner Doris Meissner.

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Additional Attorneys for Plaintiffs

1 Plaintiffs and defendants, by and through their undersigned
2 counsel, hereby agree and stipulate as follows:

3 1. Class Definition

4 The following subclasses are entitled to relief pursuant to this
5 Settlement Agreement:

6 A. All persons who are otherwise prima facie eligible for
7 legalization under Section 245A of the Immigration and Nationality Act
8 ("INA") who attempted to file a completed application and application
9 fee with a representative of the Immigration and Naturalization
10 Service ("INS") including a Qualified Designated Entity ("QDE"),
11 during the period from May 5, 1987, to May 4, 1988, but had the
12 application and fee refused by that representative because they had
13 traveled outside of the United States and returned with a visitor's
14 visa, student visa, or any other type of visa or travel document.

15 B. All persons who filed for class membership under Newman et
16 al. v. INS et al., 87-4757-WDK(CWx) (C.D. Cal.), and who are otherwise
17 prima facie eligible for legalization under Section 245A of the INA,
18 who were informed by an INS officer or QDE employee during the period
19 May 5, 1987, to May 4, 1988, that they were ineligible for
20 legalization because they had traveled outside of the United States
21 and returned with a visitor's visa, student visa, or any other type of
22 visa or travel document, or were refused by the INS or its QDEs
23 legalization forms on account of that travel and the facially valid
24 visa rule, and for whom such information, or inability to obtain the
25 required application forms, was a substantial cause of their failure
26 to timely file or complete a written application.

27 For purposes of the subclass definition, the phrase "filed for
28 class membership" shall be determined in accordance with 8 C.F.R.

1 § 245a.10.

2 2. Notice to Defendants' Employees

3 Commencing within fourteen (14) days of the date on which this
4 Settlement Agreement is approved by the district court, or a separate
5 settlement agreement is approved by the district court in Catholic
6 Social Services, Inc. v. Reno, CIV No. S-86-1343 LKK (E.D. Cal.),
7 ("CSS") whichever is later, defendants shall use good faith and
8 reasonable efforts to distribute this Settlement Agreement or a
9 summary attached as Exhibit 1 to all of their officers, agents and
10 employees responsible for processing class membership claims or who
11 may in the course of their duties supervise officers who detain or
12 remove putative class members. Defendants shall use good faith and
13 reasonable efforts to serve Class Counsel with copies of all
14 supplemental instructions or guidelines issued to their officers,
15 agents or employees regarding implementation of this Settlement
16 Agreement.

17 3. Notice to Subclass Members

18 In the event that this agreement is approved by the district
19 court, defendants shall, within sixty (60) days from the date of the
20 court's approval, or the approval of a separate settlement agreement
21 by the district court in CSS, whichever is later, issue a press
22 release and a Class Notice in English and Spanish (attached as Exhibit
23 2) announcing this Settlement Agreement. The press release, Class
24 Notice, and Newman Class Membership Applications (attached as Exhibit
25 3) shall be distributed to the media and community-based organizations
26 according to the BCIS's normal procedure for doing so, and defendants
27 shall provide a copy of the distribution list to class counsel. The
28 press release, Class Notice and Newman Class Membership Applications

1 shall be posted on defendants' web site until the end of the
2 application period referenced in paragraph 4 below. The press
3 release, Class Notice and Newman Class Membership Applications shall
4 also be made available at defendants' district offices until the end
5 of the application period referenced in paragraph 4 below. Within 60
6 days of this Settlement Agreement and during the remainder of the
7 application period specified in paragraph 4, defendants shall make
8 available to all persons, upon request, a copy of Form I-687, Newman
9 Class Member Applications and instructions, and Form I-765.

10 4. Application Period.

11 In the event that this agreement is approved by the district
12 court, defendants shall, within thirty (30) to sixty (60) days after
13 the issuance of Notices required in Paragraph 3 above, commence
14 accepting Newman Class Membership Applications, and Form I-687
15 Application for Status as a Temporary Resident with fee, and
16 supporting documentation, from subclass member applicants. Defendants
17 shall continue to accept such applications for subclass membership and
18 temporary permanent residence for a period of one year thereafter, and
19 no longer. Applications shall be deemed filed on the date postmarked
20 in accordance with the provisions at 8 C.F.R. § 245a.12(a).

21 5. Filing of Applications.

22 Individuals asserting a claim for relief under this Settlement
23 Agreement shall file a Newman Class Membership Application, and a Form
24 I-687, Application for Status as a Temporary Resident, with fee, and
25 supporting documentation.

1 The fee for filing a Form I-687 shall be the fee applicable by
2 regulation or Federal Register Notice at the time of filing the
3 application(s). (The fee for filing a Form I-687, which has not
4 changed since 1986, is currently \$185 per person with a family cap of
5 \$420, but may be changed to reflect the current cost of adjudication).
6 The fee for fingerprinting is currently \$50 and the fee for filing
7 Form I-765, Application for Employment Authorization, is currently
8 \$100. Except as provided for in Paragraph 10 below, applicants must
9 file a Form I-765 with fee if they wish to receive an employment
10 authorization document.

11 As to persons who previously filed for class membership, as that
12 term is defined in paragraph 1 above, Defendants shall refund the fee
13 for filing the Form I-687 if such person's application for class
14 membership is denied pursuant to paragraphs 6, 7 and 8 below.

15 As to those individuals who did not previously file for class
16 membership, as that term is defined in paragraph 1 above, there shall
17 be no refund of the fee for filing the Form I-687 if such person's
18 application for class membership is denied pursuant to paragraphs 6, 7
19 and 8 below.

20 6. Adjudication of Applications for Class Membership

21 Newman Class Membership Applications should be granted if, based
22 on responses to questions asked on the applications, it appears more
23 probable than not that the applicant meets the subclass definition. A
24 determination that an applicant is a subclass member is not binding in
25 any manner on defendants for the purposes of an adjudication on the
26 merits of the application for temporary residence which shall be
27 conducted de novo. Newman Class Membership Applications shall not be
28 denied solely because applicants do not possess documentary evidence

1 establishing class membership. Defendants shall treat information and
2 materials submitted in connection with a Newman Class Member
3 Application as confidential in accordance with 8 U.S.C. § 1255a(c)(5).

4 7. Intended Denials of Class Membership

5 Before denying an application for class membership, defendants
6 shall forward the applicant or his or her representative a notice of
7 intended denial explaining the perceived deficiency in the applicant's
8 Newman Class Membership Application and providing the applicant thirty
9 (30) days to submit additional written evidence or information to
10 remedy the perceived deficiency.

11 8. Denial of Applications for Class Membership.

12 Defendants shall send a written notice of the decision to deny an
13 application for class membership to the applicant and his or her
14 attorney of record, with a copy to Class Counsel. The notice shall
15 explain the reason for the denial of the application, and notify the
16 applicant of his or her right to seek review of such denial by a
17 Special Master, on the document attached as Exhibit 4. On review,
18 neither defendants nor the applicant shall be permitted to submit new
19 evidence to the Special Master.

20 9. Review by Special Master.

21 A. Selection of the Special Masters. These will be the same
22 Special Masters selected in CSS, and any appeals will be assigned in
23 the same random manner as in that case.

24 B. Review of Decisions Involving Determination of Class
25 Membership. Any decision by defendants denying an application for
26 subclass membership may be appealed to a Special Master. Any such
27 appeal must be post-marked within 30 days of the date of mailing of
28 the notice denying the application for class membership. The Special

1 Master's review shall be based on the documents and other evidence
2 submitted by the applicant, and any documentary evidence relied upon
3 by defendants in reaching the decision to deny the application for
4 class membership.

5 The Special Master shall be paid a fee of \$125 for adjudicating
6 each appeal under subparagraphs (i) and (ii) below. Payment of this
7 fee shall be borne by the parties as follows:

8 (i) If the appeal involves a denial of class membership based on
9 criminal or security-related grounds, the applicant is responsible for
10 paying the entire fee; and

11 (ii) If the appeal involves a denial of class membership on other
12 than criminal or security-related grounds, the fee shall be borne
13 equally by defendants and the applicant. The applicant's portion of
14 the fee must accompany his or her notice of appeal. Defendants must
15 submit their portion of the fee within 30 days of being notified by
16 the Special Master that an appeal has been duly filed.

17 C. Review of Other Decisions. An applicant who believes that
18 defendants have violated his or her individual rights pursuant to
19 paragraphs 3, 4, 5, 7, 10, 12, or 13 of this Settlement Agreement may
20 file a claim with the Special Master. However, prior to filing any
21 such claim, the applicant must advise defendants by certified mail, or
22 other documented delivery service to an address specified by
23 defendants, that he or she believes that Defendants have violated his
24 or her rights under Paragraphs 3, 4, 5, 7, 10, 12, or 13. Defendants
25 shall have forty-five (45) days from the date they are notified of the
26 applicant's intent to file a claim under this paragraph in which to
27 investigate and, if appropriate, rectify any deficiency. If fifty
28 (50) days after notifying defendants of his or her intent to file a

1 claim, the applicant does not receive notice that defendants have
2 sustained the applicant's challenge, then the applicant may file his
3 or her appeal to the Special Master. Any such appeal must be post-
4 marked within eighty (80) days of the date the applicant advised
5 Defendants of the alleged violation.

6 The Special Master shall be paid a fee of \$65 for adjudicating
7 each appeal under this subparagraph C. The applicant must pay the
8 entire fee at the time he or she files the notice of appeal. If the
9 applicant prevails on the merits of his or her appeal, Defendants must
10 reimburse the applicant the entire fee within a reasonable time after
11 being notified that the applicant prevailed on appeal.

12 10. Renewal of Employment Authorization Documents

13 Defendants shall, without fee, reissue or renew for a period of
14 one year employment authorization to applicants in the subclass
15 defined herein who were previously issued such employment
16 authorization pursuant to interim relief orders in Newman et al. v.
17 INS, No. 87-4757 (C.D. Cal.). An applicant shall be entitled to have
18 his or her employment authorization renewed only during the
19 application period and only one time under this provision.

20 11. Adjudication of Applications for Temporary Residence.

21 Defendants shall adjudicate each application for temporary
22 residence filed on Form I-687 in accordance with the provisions of
23 Section 245A of the INA, 8 U.S.C. § 1255a, regulations, and
24 administrative and judicial precedents the INS followed in
25 adjudicating I-687 applications timely filed during the IRCA
26 application period. In adjudicating I-687s pursuant to this
27 agreement, defendants shall utilize the standards set forth in 8 CFR
28 § 245a.18(c), or 8 CFR § 245a.2(k)(4), which ever is more favorable to

1 the applicant. Failure to provide evidence other than affidavits
2 shall not be the sole basis for finding an alien failed to meet the
3 continuous residence requirement. For purposes of establishing
4 residence and presence in 8 C.F.R. § 245a.2(b), the term "until the
5 date of filing" shall mean until the date the alien attempted to file
6 a completed application and fee or was caused not to timely file,
7 consistent with the Subclass Definitions. In evaluating the
8 sufficiency of applicant's proof of residence, defendants shall take
9 into account the passage of time and attendant difficulties in
10 obtaining corroborative documentation of unlawful residence.

11 12. Time for Determining Class Membership
12 and Legalization Applications.

13 A. Defendants shall use good faith and reasonable efforts
14 either to approve applications for class membership or issue notices
15 of intended denials within ninety (90) days. If a notice of intended
16 denial is issued, defendants shall endeavor to issue a final decision
17 on the application for class membership within ninety (90) days after
18 receipt of an applicant's supplemental evidence or explanation, if
19 any.

20 B. Defendants shall use good faith and reasonable efforts to
21 adjudicate subclass members' I-687 Forms within one hundred and eighty
22 (180) days of approval of their application for class membership.

23 C. If the aggregate volume of Form I-687 applications received
24 under this Settlement Agreement and the Settlement Agreement reached
25 in CSS exceeds two hundred forty thousand it is anticipated that the
26 approximate processing times referenced in subparagraphs A and B above
27 will double.

1 13. Removal of Class Applicants from the United States.

2 Defendants shall not remove from the United States or detain any
3 putative class members who appear to be prima facie eligible for class
4 membership under this Settlement Agreement and for legalization under
5 Section 245A of the INA. This paragraph shall not apply to any alien
6 who is subject to detention or removal despite his or her having been
7 previously determined to be eligible for class membership. For
8 example, if, after having been deemed a class member, it is found that
9 the alien has been convicted of a crime(s) that render(s) him or her
10 ineligible for legalization, the alien may nevertheless be detained
11 and removed from the United States.

12 14. Reporting on Implementation of This Agreement.

13 Commencing four months after the beginning of the filing period,
14 defendants shall prepare quarterly reports setting forth the number of
15 Newman Class Membership Applications, Forms I-687, and Forms I-765,
16 that were received, approved, denied and pending. Copies of such
17 report shall be provided to Class Counsel. In the event defendants
18 believe good cause exists to extend the time periods set forth in
19 paragraphs 12, defendants shall provide Class Counsel with a written
20 explanation of such cause and proposed alternative target periods.

21 15. Costs and Attorneys Fees.

22 Defendants will pay plaintiffs attorneys' fees and costs, as
23 determined by a separate agreement.

24 16. Duration of Agreement.

25 The parties agree that this agreement will become effective on
26 the date it is approved by the Court. The agreement will remain in
27 effect for one year after defendants adjudicate the last application
28 for class membership. Defendants agree to promptly notify Class

1 Counsel of the date they adjudicate the last application for class
2 membership.

3 17. Dismissal of Complaint, Dissolution of Injunctive Orders and
4 Other Decisions.

5 In the event the district court approves this Settlement
6 Agreement, plaintiffs agree to promptly move the court for dismissal
7 with prejudice of each and every claim of the complaint, as amended,
8 and the dissolution of any injunctive order(s) and other decisions
9 entered by the district court.

10 18. Continuing Jurisdiction.

11 The parties agree that notwithstanding the filing and granting of
12 any motion pursuant to paragraph No. 17, the district court will
13 retain jurisdiction in this action over only the matters described
14 immediately below.

15 A. Claims by plaintiffs that the Defendants have engaged in a
16 pattern and practice of refusing to implement any of the
17 relief set forth in this Agreement.

18 B. Claims by plaintiffs that the Defendants have expressly
19 repudiated this Agreement.

20 C. At least sixty (60) days prior to bringing any action
21 pursuant to this provision, the parties shall meet and
22 confer in a good faith effort to resolve any of their
23 differences.

24 D. Any action under this provision must be brought within one
25 year after the Defendants adjudicate the last application
26 for class membership.

27 19. Class Counsel.

28 Class Counsel for the purposes of this Settlement Agreement are

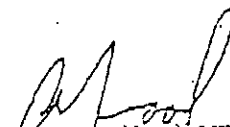
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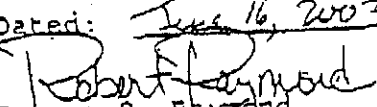
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1 Peter Schey and Carlos R. Holguin, Center for Human Rights and
 2 Constitutional Law, 256 S. Occidental Blvd., Los Angeles, CA 90057,
 3 telephone (213) 388-2693, facsimile (213) 386-9494, email
 4 amnestycoordinator@centerforhumanrights.org.

5 20. This agreement is conditioned upon approval by the Secretary
 6 of the Department of Homeland Security, and the Deputy Attorney
 7 General, United States Department of Justice.

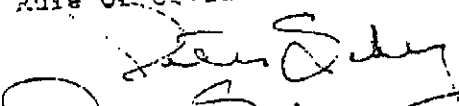
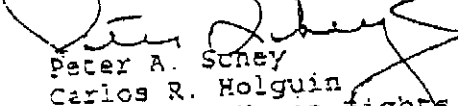
8 21. This agreement is subject to approval by the United States
 9 District Court pursuant to Federal Rule of Civil Procedure 23.

10
 11 
 12 Anthony W. Norwood
 13 U.S. Department of Justice
 14 P.O. Box 273, Ben Franklin
 15 Station
 16 Washington, DC 20044
 17 202-616-4293
 18 Counsel for Defendants

19 Dated: June 16, 2003
 20 
 21 Robert R. Raymond
 22 Associate General Counsel
 23 Bureau of Citizenship and
 24 Immigration Services
 25 U.S. Department of Homeland
 26 Security

27 Dated: 6-16-03

28 June 16, 2003



 Peter A. Schey
 Carlos R. Holguin
 Center for Human Rights
 and Constitutional Law
 256 S. Occidental Blvd.
 Los Angeles, CA 90057
 (213) 388-2693
 Counsel for Plaintiffs

Dated: June 17, 2003

EXHIBIT B

wy

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JAN 21 2004

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY AMS DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
WESTERN DIVISION

CATHOLIC SOCIAL SERVICES, INC.,—
IMMIGRATION PROGRAM, ET AL.,

Plaintiffs,

v.

TOM RIDGE, SECRETARY
U.S. DEPARTMENT OF HOMELAND
SECURITY, ET AL.,

Defendants.

Case No. Civ S-86-1343-LKK

ORDER APPROVING
SETTLEMENT OF CLASS ACTION

[Proposed]

Hearing: January 23, 2004.
Time: 10:00 a.m.

FILED

JAN 23 2004

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

1 This matter is before the Court pursuant to the parties' Joint Motion to Approve
2 Settlement of Class Action. The Court has read and considered the parties' motion, the
3 comments and objections of putative class members to the proposed settlement, and the
4 parties' joint response to those objections. The Court finds that the proposed settlement
5 fully and fairly resolves the claims of class members herein and that it should
6 accordingly be approved.

7 Rule 23(e) of the Federal Rules of Civil Procedure provides: "A class action shall
8 not be dismissed or compromised without the approval of the court, and notice of the
9 proposed dismissal or compromise shall be given to all members of the class in such
10 manner as the court directs."

11 "Although Rule 23(e) is silent respecting the standard by which a proposed
12 settlement is to be evaluated, the universally applied standard is whether the settlement
13 is fundamentally fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*
14 *of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983). It is the
15 settlement taken as a whole, rather than the individual component parts, that must be
16 examined for overall fairness. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.
17 1992), cert. denied, 506 U.S. 953 (1992). There is a "strong judicial policy that favors
18 settlements, particularly where complex class action litigation is concerned." *Id.*

19 Applying these standards to the settlement before it, the Court begins by noting
20 that this matter has been vigorously litigated for over 17 years. There is no suggestion of
21 collusion between the negotiating parties to the detriment of absent class members. See
22 *Officers for Justice*, supra, 688 F.2d at 625 ("the court's intrusion upon what is otherwise a
23 private consensual agreement negotiated between the parties to a lawsuit must be
24 limited to the extent necessary to reach a reasoned judgment that the agreement is not
25 the product of fraud or overreaching by, or collusion between, the negotiating
26 parties...").

27 The parties have notified the class of their settlement in accordance with the
28

1 Court's order. See Order re: Settlement of Class Action, September 23, 2003. The period
2 to object to the settlement ended on December 29, 2003. *Id.* Though the precise size of the
3 certified class is unknown, it undoubtedly comprises thousands of class members. As of
4 January 12, 2004, two putative class members Mohammad Z. Shah and Carlos Aragon
5 Hurtado, have objected to or commented on the settlement.

6 Mr. Hurtado does not object to the settlement, but instead writes that the
7 Immigration and Naturalization Service (INS) denied him legalization under the IRCA's
8 Special Agricultural Worker Program (SAW). See 8 U.S.C. § 1160. For the reasons set out
9 in the parties' Joint Report re: Objections to Settlement of Class Action, filed January 20,
10 2004, the Court finds that nothing in Mr. Hurtado's comment warrants the Court's
11 disapproving the settlement.

12 Mr. Shah asserts, among other things, that he was refused entry into the United
13 States when he returned from a trip abroad in 1998 despite being granted advance
14 parole. He objects that the settlement will not benefit individuals in his circumstance: i.e.,
15 persons who are not now present in the United States despite having been granted
16 advance parole.

17 The parties disagree over whether individuals in Mr. Shah's circumstances will
18 benefit under the settlement. Plaintiffs contend that Mr. Shah and those similarly
19 situated will be entitled to apply for class membership pursuant to the settlement and, if
20 they establish class membership, to pursue their applications for legalization under 8
21 U.S.C. § 1255a. Defendants assert that persons outside the United States are also outside
22 the scope of the settlement. The Court finds it unnecessary to resolve this disagreement.

23 Mr. Shah states that he departed the United States pursuant to advance parole,
24 and if this is so he could arguably avail himself of the procedure set out in 8 C.F.R. §
25 245a.2(m)¹ to seek readmission to the United States. See *Reno v. Catholic Soc. Servs.*, 509

26
27
28 ¹ 8 C.F.R. § 245a.2(m)(1) provides:

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1 U.S. 43, 67 n.29 (1993) (In this case class members "applied" for legalization at the time
2 they were front-desked or constructively front-desked). Should defendants readmit him,
3 then their argument for denying him the benefits of the settlement would be moot.
4 Further, in any settlement as complex as that before the Court, there is the potential for
5 differing interpretation. The settlement itself anticipates such disagreements and
6 establishes procedures for their resolution. See Settlement ¶¶ 8-9, 18.

7 At this juncture, Mr. Shah does not appear to have asserted his rights, if any,
8 under 8 C.F.R. § 245a.2(m); he has not yet applied for class membership; defendants
9 have not yet denied him benefits under the settlement; nor has he yet availed himself of
10 the settlement's dispute resolution procedures. The claims of Mr. Shah and those
11 similarly situated will be fit for judicial resolution when and if defendants deny them the
12 benefits of the settlement because they are outside the United States. It is neither
13 necessary nor appropriate that the Court resolve such potential claims now. *Cf. Reno v.*
14 *Catholic Social Services*, 509 U.S. 43, 58-59 & n.19 ("[A] class member's claim would ripen
15 only once he took the affirmative steps that he could take before the INS blocked his
16 path by applying the regulation to him.").

17 Yet even assuming, *arguendo*, that Mr. Shah were excluded from its coverage, a
18 question this Court does not resolve at this time, the settlement would nevertheless
19 satisfy Rule 23. As has been said, the test under Rule 23 is whether the settlement taken as
20 a whole, rather than the individual component parts, is fair. *Class Plaintiffs v. City of*
21 *Seattle*, *supra*, 955 F.2d at 1276. "Ultimately, the district court's determination is nothing
22 more than 'an amalgam of delicate balancing, gross approximations and rough justice.'"

23
24
25 During the time period from the date that an alien's application establishing
26 prima facie eligibility for temporary resident status is reviewed at a Service
27 Legalization Office and the date status as a temporary resident is granted, the
28 alien applicant can only be readmitted to the United States provided his or her
departure was authorized under the Service's advance parole provisions
contained in § 212.5(f) of this chapter.

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US ATTORNEY

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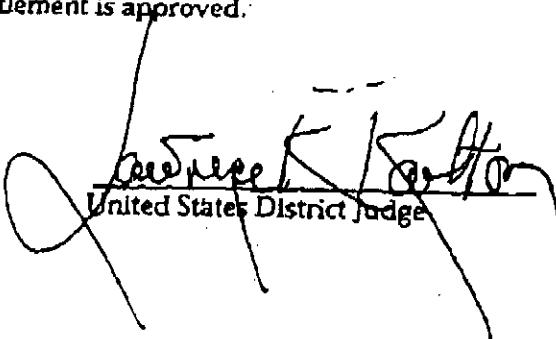
1 *Officers for Justice, supra*, 688 F.2d at 625 (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d
2 448, 468 (2d Cir. 1974)).

3 Were the Court to disapprove the settlement because defendants may oppose the
4 claims of what the parties agree is a minuscule number of putative class members who
5 are no longer in the United States, thousands of class members who reside in the United
6 States at the time they apply for class membership and have a vital interest in the
7 settlement would be denied crucial benefits and compelled to continue a 17-year
8 litigation to an uncertain conclusion. Weighing these relative costs and benefits, the
9 settlement clearly meets the requirements of Rule 23.

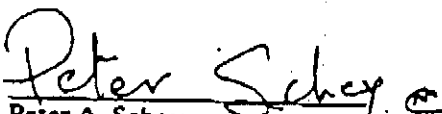
10 Based on the foregoing, and for the reasons set forth in the parties' Joint Motion to
11 Approve Settlement of Class Action, the Court finds that the settlement is fundamentally
12 fair, adequate and reasonable. Accordingly.

13 IT IS HEREBY ORDERED that the settlement is approved.

14
15 Dated: 1/23, 2004.

16
17 
United States District Judge

18 Presented by:

19
20 
21 Peter A. Schey
22 Carlos R. Holguin
Counsel for plaintiffs

23 ///

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
WESTERN DIVISION

CATHOLIC SOCIAL SERVICES, INC.,
et al.,

Plaintiffs

TOM RIDGE, Secretary, U.S. Department
of Homeland Security, et al.,

Defendants

CIV. NO. S-86-1343 LKK

JOINT STIPULATION
REGARDING SETTLEMENT

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Telephone: (916) 554-2700

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Civil Division

7 DAVID J. KLINE
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8 EARLE B. WILSON
Attorney

9 ANDREW C. MACLACHLAN
Attorney

10 U.S. Department of Justice
Office of Immigration Litigation
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14 CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW

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(206) 224-8790

24 Of Counsel:

25 STEPHEN A. ROSENBAUM, Esq.
2212 6th Street
26 Berkley, CA 94710

7 COUNSEL FOR PLAINTIFFS

1 Plaintiffs and Defendants, by and through their undersigned counsel, hereby agree and
2 stipulate as follows:

3 1. Class Definition

4 The following subclasses are entitled to relief pursuant to this Settlement Agreement:

- 5 A. All persons who were otherwise prima facie eligible for legalization under section
6 245A of the INA, and who tendered completed applications for legalization under
7 section 245A of the INA and fees to an INS officer or agent acting on behalf of
8 the INS, including a QDE, during the period from May 5, 1987 to May 4, 1988,
9 and whose applications were rejected for filing because an INS officer or QDE
10 concluded that they had traveled outside the United States after November 6, 1986
11 without advance parole.
- 12 B. All persons who filed for class membership under Catholic Social Services, Inc. v.
13 Reno, CIV No. S-86-1343 LKK (E.D. Cal.), and who were otherwise prima facie
14 eligible for legalization under Section 245A of the INA, who, because an INS
15 officer or QDE concluded that they had traveled outside the United States after
16 November 6, 1986 without advance parole were informed that they were ineligible
17 for legalization, or were refused by the INS or its QDEs legalization forms, and
18 for whom such information, or inability to obtain the required application forms,
19 was a substantial cause of their failure to timely file or complete a written
20 application.

21 For purposes of the class definition as used in subparagraph B, the phrase "filed for class
22 membership" shall be determined in accordance with 8 C.F.R. § 245a.10.

23 2. Notice to Defendants' Employees

24 Commencing within fourteen (14) days of the date on which this Settlement Agreement is
25 approved by the district court, Defendants shall use good faith and reasonable efforts to distribute
26 this Settlement Agreement or a summary attached as Exhibit 1 to all of their officers, agents and
27 employees responsible for processing class membership claims or who may in the course of their
28 duties supervise officers who detain or remove putative class members. Defendants shall use
good faith and reasonable efforts to serve Class Counsel with copies of all supplemental
instructions or guidelines issued their officers, agents or employees regarding implementation of
this Settlement Agreement.

3. Notice to Class Members

In the event that this agreement is approved by the district court, Defendants shall, within
sixty (60) days from the date of the court's approval, issue a press release and a Class Notice in
English and Spanish (the texts of which are attached as Exhibit 2) announcing this Settlement
Agreement. The press release, Class Notice, and Class Member Applications (attached as
Exhibit 3) sheet shall be distributed to the media and community-based organizations according
to BCIS's normal procedure for doing so, with a copy of these lists provided to Class Counsel.
The press release, Class Notice and Class Member Applications shall be posted on Defendants'
web site until the end of the application period referenced in paragraph 4 below. The press
release, Class Notice and Class Member Applications shall also be made available at Defendants'
district offices until the end of the application period referenced in paragraph 4 below. Within
sixty (60) days of the district court's approval of this Settlement Agreement and during the
remainder of the application period specified in paragraph 4, Defendants shall make available to

1 all persons, upon request, a copy of Form I-687, Class Member Applications and instructions,
2 and Form I-765.

3
4 4. Application Period.

5 In the event that this agreement is approved by the district court, the Defendants shall,
6 within thirty (30) to sixty (60) days after the issuance of Notices required in paragraph 3 above,
7 commence accepting CSS Class Membership Applications, and Form I-687, Application for
8 Status as a Temporary Resident, with fee and supporting documentation, from class member
9 applicants. Defendants shall continue to accept such applications for class membership and
10 temporary permanent residence for a period of one year thereafter, and no longer. Applications
11 shall be deemed filed on the date postmarked in accordance with the provisions at 8 C.F.R. §
12 245a.12(a).

13
14 5. Filing of Applications.

15 Individuals asserting a claim for relief under this Settlement Agreement shall file a CSS
16 Class Membership Applications, and a Form I-687, Application for Status as a Temporary
17 Resident, with fee and supporting documentation.

18 The fee for filing a Form I-687 shall be the fees applicable by regulation or Federal
19 Register Notice at the time of filing the application(s). (The fee for filing a Form I-687, which
20 has not changed since 1986, is currently \$185 per person with a family cap of \$420, but may be
21 changed to reflect the current cost of adjudication). The fee for fingerprinting is currently \$50
22 and the fee for filing Form I-765, Application for Employment Authorization, is currently \$120.
23 Except as provided for in paragraph 10, applicants seeking employment authorization must file a
24 Form I-765 with fee if they wish to receive an employment authorization document.

25 As to persons who previously filed for class membership, as that term is defined in
26 paragraph 1 above, Defendants shall refund the fee for filing the Form I-687 if such person's
27 application for class membership is denied pursuant to paragraphs 7 and 8 below.

28 As to those individuals who did not previously file for class membership, as that term is
defined in paragraph 1 above, there shall be no refund of the fee for filing the Form I-687 if such
person's application for class membership is denied pursuant to paragraphs 7 and 8 below.

6. Adjudication of Applications for Class Membership.

CSS Class Membership Applications should be granted if, based on responses to
questions asked on the applications, it appears more probable than not that the applicant meets
the class definition. A determination that an applicant is a class member is not binding in any
manner on Defendants for the purposes of an adjudication on the merits of the application for
temporary residence which shall be conducted de novo. Class Member Applications shall not be
denied solely because applicants do not possess documentary evidence establishing class
membership. Defendants shall treat information and materials submitted in connection with
Class Member Application as confidential in accordance with 8 U.S.C. § 1255a(c)(5).

7. Intended Denials of Class Membership

Before denying an application for class membership, the Defendants shall forward the
applicant or his or her representative a notice of intended denial explaining the perceived
deficiency in the applicant's Class Member Application and providing the applicant thirty (30)
days to submit additional written evidence or information to remedy the perceived deficiency.

1 8. Denial of Applications for Class Membership.

2 The Defendants shall send a written notice of the decision to deny an application for class
3 membership to the applicant and his or her attorney of record, with a copy to Class Counsel. The
4 notice shall explain the reason for the denial of the application, and notify the applicant of his or
5 her right to seek review of such denial by a Special Master, on the document attached as Exhibit
6 4. On review, neither the Defendants nor the applicant shall be permitted to submit new
7 evidence to the Special Master.

8 9. Review by Special Master.

9 A. Selection of the Special Master. Each party shall select one person, from a list of
10 three names recommended by the other party, to serve as a Special Master.
11 Appeals from denial of applications for class membership shall be assigned
12 randomly to a Special Master. The two Special Masters shall jointly designate the
13 mailing address for appeals and determine procedures for random assignment.

14 B. Review of Decisions Involving Determination of Class Membership. Any
15 decision by the Defendants denying an application for class membership may be
16 appealed to a Special Master. Any such appeal must be post-marked within thirty
17 (30) days of the date of mailing of the notice denying the application for class
18 membership. The Special Master's review shall be based on the documents and
19 other evidence submitted by the applicant, and any documentary evidence relied
20 upon by the Defendants in reaching the decision to deny the application for class
21 membership.

22 The Special Master shall be paid a fee of \$125 for adjudicating each appeal under
23 subparagraph B. Payment of this fee shall be borne by the parties as follows:

- 24 (i) If the appeal involves a denial of class membership based on criminal or
25 security-related grounds, the applicant is responsible for paying the entire
26 fee; and
- 27 (ii) If the appeal involves a denial of class membership on other than criminal
28 or security-related grounds, the fee shall be borne equally by Defendants
and the applicant. The applicant's portion of the fee must accompany his
or her notice of appeal. Defendants must submit their portion of the fee
within thirty (30) days of being notified by the Special Master that an
appeal has been duly filed.

29 C. Review of Other Decisions. An applicant who believes that Defendants have
30 violated his or her individual rights pursuant to paragraphs 3, 4, 5, 7, 10, 12, and
31 13 of this Settlement Agreement may file a claim with the Special Master.
32 However, prior to filing any such claim, the applicant must advise Defendants by
33 certified mail, or other documented delivery service to an address specified by
34 Defendants, that he or she believes that Defendants have violated his or her rights
35 under Paragraphs 3, 4, 5, 7, 10, 12, and 13. Defendants shall have forty-five (45)
36 days from the date they are notified of the applicant's intent to file a claim under
37 this paragraph in which to investigate and, if appropriate, rectify any deficiency.
38 If fifty (50) days after notifying Defendants of his or her intent to file a claim, the
applicant does not receive notice that Defendants have sustained the applicant's
challenge, then the applicant may file his or her appeal to the Special Master. Any
such appeal must be post-marked within eighty (80) days of the date the applicant
advised Defendants of the alleged violation.

1 The Special Master shall be paid a fee of \$65 for adjudicating each appeal under this
 2 subparagraph C. The applicant must pay the entire fee at the time he or she files the
 3 notice of appeal. If the applicant prevails on the merits of his or her appeal, Defendants
 must reimburse the applicant the entire fee within a reasonable time after being notified
 that the applicant prevailed on appeal.

4 10. Renewal of Employment
 5 Authorization Documents.

6 The Defendants shall, without fee, reissue or renew for a period of one year employment
 7 authorization for aliens who were previously issued such employment authorization and advance
 8 parole pursuant to interim relief orders in Catholic Social Services, Inc. v. Reno, S-86-1343. An
 9 applicant shall be entitled to have his or her employment authorization renewed only during the
 application period and only one time under this provision.

10 11. Adjudication of Applications for Temporary Residence.

11 The Defendants shall adjudicate each application for temporary residence filed on Form I-
 12 687 in accordance with the provisions of section 245A of the Immigration and Nationality Act, 8
 13 U.S.C. § 1255a, regulations, and administrative and judicial precedents the INS followed in
 14 adjudicating I-687 applications timely filed during the IRCA application period. In adjudicating
 15 I-687s pursuant to this agreement, Defendants shall utilize the standards set forth in 8 CFR
 16 § 245a.18(c), or 8 CFR § 245a.2(k)(4), which ever is more favorable to the applicant. Failure to
 provide evidence other than affidavits shall not be the sole basis for finding that an alien failed to
 meet the continuous residence requirement. For purposes of establishing residence and presence
 in 8 C.F.R. § 245a.2(b), the term "until the date of filing" shall mean until the date the alien was
 "front-desked" or "discouraged from filing" consistent with the Class Definition. In evaluating
 the sufficiency of applicant's proof of residence, Defendants shall take into account the passage
 of time and attendant difficulties in obtaining corroborative documentation of unlawful
 residence.

17 12. Time for Determining Class Membership
 18 and Legalization Applications.

- 19 A. Defendants shall use good faith and reasonable efforts either to approve
 20 applications for class membership or issue notices of intended denials within
 21 ninety (90) days. If a notice of intended denial is issued, defendants shall
 22 endeavor to issue a final decision on the application for class membership within
 23 ninety (90) days after receipt of an applicant's supplemental evidence or
 explanation, if any.
- 24 B. Defendants shall use good faith and reasonable efforts to adjudicate class
 25 members' I-687 forms within one hundred and eighty (180) days of approval of
 26 their application for class membership.
- 27 C. If the aggregate volume of Form I-687 applications received under this Settlement
 28 Agreement and the Settlement Agreement reached in Newman v. DHS, Civ 87-
 4757-WDK (C.D. Cal), exceeds two hundred forty thousand it is anticipated that
 the approximate processing times referenced in subparagraphs A and B above will
 double.

13. Removal of Class Applicants from the United States.

Defendants shall not remove from the United States or detain any putative class members who appear to be prima facie eligible for class membership under this Settlement Agreement and for legalization under section 245A of the INA. This paragraph shall not apply to any alien who is subject to detention or removal despite his or her having been previously determined to be eligible for class membership. For example, if, after having been deemed a class member, it is found that the alien has been convicted of a crime(s) that render(s) him or her ineligible for legalization, the alien may nevertheless be detained and removed from the United States.

14. Reporting on Implementation of This Agreement.

Commencing four months after the beginning of the filing period, Defendants shall prepare quarterly reports setting forth the number of Class Membership applications, Forms I-687, and Forms I-765, that were received, approved, denied and pending. Copies of such reports shall be provided to Class Counsel. In the event Defendants believe good cause exists to extend the time periods set forth in paragraph 12 above, Defendants shall provide Class Counsel with a written explanation of such cause and proposed alternative target periods. The parties shall meet and confer in a good faith effort to resolve any disagreements over proposed new target periods prior to petitioning this District Court pursuant to paragraph 18 below.

15. Costs and Attorneys Fees.

Defendants will pay plaintiffs attorneys fees and costs, as determined by a separate agreement.

16. Duration of Agreement.

The parties agree that this agreement will become effective on the date it is approved by the Court. The agreement will remain in effect for one year after the Defendants adjudicate the last application for class membership. The Defendants agree to promptly notify Class Counsel of the date it adjudicates the last application for class membership.

17. Dismissal of Complaint, Dissolution of Injunctive Orders and Other Decisions:

In the event the district court approves this Settlement Agreement, Plaintiffs agree to promptly move the court for dismissal with prejudice of each and every claim of the complaint, as amended, and the dissolution of any injunctive order(s) and other decisions entered by the district court.

18. Continuing Jurisdiction.

The parties agree that notwithstanding the filing and granting of any motion pursuant to paragraph No. 17, the district court will retain jurisdiction in this action over only the matters described immediately below.

- A. Claims by plaintiffs that the Defendants have engaged in a pattern and practice of refusing to implement any of the relief set forth in this Agreement.
- B. Claims by plaintiffs that the Defendants have expressly repudiated this Agreement.

C. At least sixty (60) days prior to bringing any action pursuant to this provision, the parties shall meet and confer in a good faith effort to resolve any of their differences.


D. Any action under this provision must be brought within one year after the Defendants adjudicate the last application for class membership.

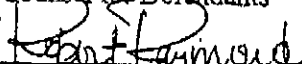
19. Class Counsel.

Class Counsel for the purposes of this Settlement Agreement is Peter Schey and Carlos R. Holguin, Center for Human Rights and Constitutional Law, 256 S. Occidental Blvd., Los Angeles, CA 90057, telephone (213) 388-8693, facsimile (213) 386-9494, email amnestycoordinator@centerforhumanrights.org.

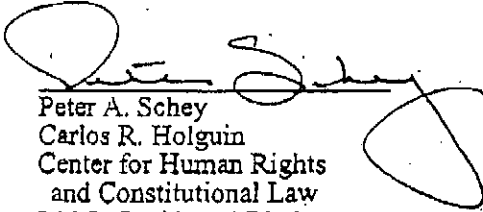
20. This agreement is conditioned upon approval by the Secretary of the U.S. Department of Homeland Security, and the Deputy Attorney General, United States Department of Justice.

21. This agreement is subject to approval by the United States District Court pursuant to Federal Rule of Civil Procedure 23.


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Counsel for Defendants


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Dated: 4-28-03


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Dated: 5-18-03